

Allison A. Neswood, *pro hac vice*
 Michael S. Carter, 028704
 Matthew Campbell, *pro hac vice*
 Jacqueline D. DeLeon, *pro hac vice*
 NATIVE AMERICAN RIGHTS FUND
 250 Arapahoe Ave.
 Boulder, CO 80302
 (303) 447-8760
 neswood@narf.org
 carter@narf.org
 mcampbell@narf.org
 jdeleon@narf.org

Samantha B. Kelty, 024110
 NATIVE AMERICAN RIGHTS FUND
 950 F Street NW, Suite 1050,
 Washington, D.C. 20004
 (202) 785-4166 (direct)
 kelty@narf.org

Additional Counsel Listed on Signature Page

Attorneys for Tohono O’odham Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Mi Familia Vota, et al.,

Plaintiffs,

v.

Adrian Fontes, in his official capacity as
 Arizona Secretary of State, et al.,

Defendants.

Living United for Change in Arizona, et al.,

Plaintiffs

v.

Adrian Fontes,

Defendant, and

State of Arizona, et al.,

Intervenor-Defendants.

Poder Latinx, et al.

No. 2:22-cv-00509-PHX-SRB
 (Consolidated)

**UNOPPOSED MOTION FOR
 LEAVE TO AMEND
 AMENDED COMPLAINT,
 DROPPING CLAIM BY
 TOHONO O’ODHAM
 PLAINTIFFS**

1
2 Plaintiffs,
3 v.

4 Adrian Fontes, et al.,

5 Defendants.

6 United States of America,

7 Plaintiff,

8 v.

9 State of Arizona, et al.,

10 Defendants.

11 Democratic National Committee, et al.,

12 Plaintiffs,

13 v.

14 Adrian Fontes, in his official capacity as
15 Arizona Secretary of State, et al.,

16 Defendants, and

17 Republican National Committee,

18 Intervenor-Defendant.

19 Arizona Asian American Native Hawaiian
20 and Pacific Islander for Equity Coalition,

21 Plaintiff,

22 v.

23 Adrian Fontes, in his official capacity as
24 Arizona Secretary of State, et al.,

25 Defendants.

26 Promise Arizona, et al.,

27 Plaintiffs,

28 v.

Adrian Fontes, in his official capacity as
Arizona Secretary of State, et al.,

Defendants.

Tohono O’odham Nation, Gila River Indian
Community, Keanu Stevens, Alanna
Siquieros, and LaDonna Jacket,

1
2 Plaintiffs,

3 v.

4 Kristin K. Mayes, in her official capacity as
5 Attorney General of Arizona; Adrian
6 Fontes, in his official capacity as Arizona
7 Secretary of State; Dana Lewis in her
8 official capacity as Pinal County Recorder;
9 Gabriella Cázares-Kelly in her official
10 capacity as Pima County Recorder;
11 Stephen Richer in his official capacity as
12 Maricopa County Recorder;
13 Michael Sample in his official capacity as
14 Navajo County Recorder,

15 Defendants.

16 Pursuant to Federal Rule of Civil Procedure 15(a)(2), the Tohono O’odham
17 Nation, Gila River Indian Community, Keanu Stevens, Alanna Siquieros, and
18 LaDonna Jacket (“Tohono O’odham Plaintiffs”) respectfully move the Court for leave
19 to amend their Amended Complaint by withdrawing Count 2 of their Amended
20 Complaint without prejudice, *see* Amend. Comp., *Tohono O’odham Nation v.*
21 *Brnovich*, No. 2:22-cv-01901 at 14 (D.Ariz. Nov. 7, 2023), EFD 21 (hereafter
22 “Complaint”) and without requiring an answer from any defendant. The parties to
23 these consolidated matters have been consulted and, provided that no answer is
24 required, the motion is unopposed, with the County Recorders taking no position on
25 the motion.

26 It is within the sound discretion of the Court to grant or deny leave to amend.
27 *Wood v. Carey*, 525 F.3d 886, 432 (9th Cir. 2008). Federal Rule of Civil Procedure
28 15(a)(2) “advises the court that ‘leave [to amend] shall be freely given when justice so
requires.’” *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir.

2003) (citation omitted). Rule 15(a)(2) is construed with “extreme liberality” in favor of amendment. *Id.* Leave to amend should be granted unless “the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in litigation; or (4) is futile.” *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 951 (9th Cir. 2006). Rule 15 is also the “appropriate mechanism” to eliminate an issue or less than all claims. *Williams v. Cnty. of San Diego*, 523 F. Supp. 3d 1183, 1191 n.6 (S.D. Cal.). The Second Amended Complaint contains no new allegations, claims, or theories. As such, Defendants are not required to file an answer or other responsive pleading. *KST Data, Inc. v. DXC Tech. Co.*, 980 F.3d 709 (9th Cir. 2020).

On September 14, 2023, this Court issued an order granting Tohono O’odham Plaintiffs’ Cross-Motion for Partial Summary Judgement as to Count 1 of their complaint and adopting Tohono O’odham Plaintiffs’ requested rulings on the interpretation of A.R.S. § 16-123. Order, *Mi Familia Vota v. Fontes, et al.*, No. 2:22-cv-00509 at 9, 33-35 (Sept. 14, 2023), ECF No. 534. As a result of the Court’s order, Tohono O’odham Plaintiffs have effectively obtained the relief they were seeking. (See Complaint at 15-16). Accordingly, Tohono O’odham Plaintiffs submit this Unopposed Motion for Leave to Amend their Complaint so that they may withdraw Count 2 without prejudice. By withdrawing Count 2, Tohono O’odham Plaintiffs will avoid the expense of further active participation in pre-trial activities, as none of their claims will remain for resolution at trial.

Given the lack of opposition, withdrawal of Count 2 will not prejudice any opposing party. See *Greene v. Ab Coaster Holdings, Inc.*, 2012 WL 2342927 at *5

(S.D. Ohio 2012) (“the proposed withdrawal of a claim does not raise the same type of concerns regarding prejudice as does the proposed addition of claims.”). Because the Court has already effectively granted the relief sought by Tohono O’odham Plaintiffs, the sought amendment is not futile, is not sought in bad faith, and would not cause delay. Indeed, Tohono O’odham Plaintiffs seek to minimize the burden on this Court and all parties.

For the foregoing reasons, Tohono O’odham Plaintiffs respectfully request that this Court grant them leave to file an amended Complaint and withdraw Count 2 without prejudice.

RESPECTFULLY SUBMITTED this 16th day of October, 2023.

NATIVE AMERICAN RIGHTS FUND

By s/ Allison A. Neswood
 Allison A. Neswood*
 CO No. 49846
 neswood@narf.org
 Michael S. Carter
 AZ No. 028704, OK No. 31961
 carter@narf.org
 Matthew Campbell*
 NM No. 138207, CO No. 40808
 mcampbell@narf.org
 Jacqueline D. DeLeon*
 CA No. 288192
 jdeleon@narf.org
 NATIVE AMERICAN RIGHTS FUND
 250 Arapahoe Ave.
 Boulder, CO 80302
 (303) 447-8760

Samantha B. Kelty
 AZ No. 024110, TX No. 24085074
 kelty@narf.org
 NATIVE AMERICAN RIGHTS FUND
 950 F Street NW, Suite 1050,
 Washington, D.C. 20004
 (202) 785-4166 (direct)

OSBORN MALEDON, P.A.

David B. Rosenbaum

AZ No. 009819

Joshua J. Messer

AZ No. 035101

2929 North Central Avenue, 21st Floor

Phoenix, Arizona 85012-2793

(602) 640-9000

drosenbaum@omlaw.com

jmesser@omlaw.com

GILA RIVER INDIAN COMMUNITY

Javier G. Ramos

AZ No. 017442

Post Office Box 97

Sacaton, Arizona 85147

(520) 562-9760

javier.ramos@gric.nsn.us

*Representing Gila River Indian
Community Only*

Ezra D. Rosenberg*

DC No. 360927, NJ No. 012671974

Ryan Snow*

DC No. 1619340

Lawyers' Committee for Civil Rights
Under Law

1500 K Street NW, Suite 900

Washington, DC 20005

(202) 662-8600 (main)

erosenberg@lawyerscommittee.org

rsnow@lawyerscommittee.org

TOHONO O'ODHAM NATION

Howard M. Shanker (AZ Bar 015547)

Attorney General, Tohono O'odham
Nation

Marissa L. Sites (AZ Bar 027390)

Assistant Attorney General, Tohono
O'odham Nation

P.O. Box 830

Sells, Arizona 85634

(520) 383-3410

Howard.Shanker@tonation-nsn.gov

Marissa.Sites@tonation-nsn.gov

*Representing Tohono O'odham Nation
Only*

**Admitted Pro Hac Vice*

Attorneys for Tohono O'odham
Plaintiffs

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